

Lynch Law and the Immigrant Alien

By Frederic C. Howe

Formerly Commissioner of Immigration at the Port of New York



Reprinted for

THE PEOPLES OF AMERICA SOCIETY

from The Nation Feb. 14, 1920

THE PEOPLES OF AMERICA SOCIETY

An organization of Americans of all origins, which in the midst of a new wave of know-nothingism, is seeking through mutual knowledge to eliminate friction and promote good relations among the peoples of the United States.

GENERAL COMMITTEE

GRACE ABBOTT	ISAAC A. HOURWICH
JANE ADDAMS	WILLIAM L. LEISERSON
GEORGE L. BELL	SIMON J. LUBIN
WILLIAM ADAMS BROWN	BISHOP F. J. MCCONNELL
ALLEN T. BURNS	LOUIS F. POST
HERBERT CROLY	M. E. RAVAGE
FELIX FRANKFURTER	FATHER JOHN A. RYAN
MRS. J. BORDEN HARRIMAN	DOROTHY WHITNEY STRAIGHT
FREDERIC C. HOWE	LILLIAN D. WALD
	WILLIAM ALLEN WHITE

EXECUTIVE OFFICE

41 UNION SQUARE

NEW YORK

Lynch Law and the Immigrant Alien

THE test of America's love of liberty is our willingness to insure it to others. Our reverence for Anglo-Saxon justice is to be measured by the way we apply it to those who have never known justice; to those who have no means of protest, no power to which they can appeal for protection.

There are sixteen million persons of alien birth in the United States. Most of these have come from southern and central Europe. Many do not speak our language. They are unfamiliar with our laws and institutions. They have received little assistance in adjusting themselves to American life. The vast majority are manual workers. They do our dirty work. It is their labor that gives us our leisure. They produce a great part of the wealth which the rest of us enjoy. Industrial America rests on the backs of the alien workers who form our defenceless class.

The unnaturalized alien in America has been made a man without a country. He is outside the protection of the commonest safeguards which we throw about a criminal. He has no claims on the Bill of Rights; he is not protected by the Constitution. The alien is a *person*, it is true, and the Constitution speaks of persons, not citizens. Yet by acts of Congress and by the decisions of the courts his person and his liberty have been gradually shorn of those safeguards that our Anglo-Saxon traditions have made so sacred to the American-born. The immigrant alien may be deported for a score of reasons. The majority of them are industrial. They spring from something we have done to the alien rather than his condition when he landed. The great majority of aliens are deported because they have broken down in the industrial machine; they have become a public charge. They have been discarded by the mine, by the mill, by the factory, by the packing plant. America refuses to assume the costs and the consequences of its own industrial processes. It makes no provision for human depreciation, obsolescence, or decay. It does this for its machines; but not for human beings. These we use up and then send back to the countries from which they came. Aliens are also deported be-

cause of moral reasons; latterly, because of political opinions. A Tolstoy would have to be deported. So would Bernard Shaw. There is scarcely a critical political philosopher in Europe today who would not be deportable under our laws.

It is not alone the reasons for deportation, it is the method that is so cruel. No matter what the alien is to be deported for, no matter if the deportable condition is traceable to America, the alien has no day in court in which he can tell his story; he has no jury of his peers who will understand his experiences; he has no impartial judge guided by rules of evidence, or even by the traditions and customs which our laws have thrown about a person on trial, to see that he secures justice. The alien may not appeal to the laws of his own land; and there are no laws in his adopted land to which he can appeal. There is no indictment by a grand jury to ascertain his guilt; what he gets is more of an inquisition, a star-chamber inquest, than a trial. The proceedings are in secret. The public is excluded; so is the press. Even the alien's family—his wife, his children—are not admitted. Up to recently the alien was denied a lawyer until after the inspector had made out a case. Then the lawyer was of little value.

The trial can scarcely be dignified by that name. If the alien cannot speak English, he may not know what it is all about. And as very few inspectors throughout the country have a knowledge of any other language than English, the alien has to get along as best he can. This is not the worst feature of the procedure. The inspector who makes the arrest is also the prosecutor. He may want to make a record. Then, having prosecuted the alien, the inspector mounts the tribune and himself becomes the judge. Very frequently the prosecutor-judge becomes the clerk. He takes down the record of the hearing, a hearing in which he, the inspector, is often unable to understand the answers which he receives. Then the inspector becomes the jailor. He holds the alien if the alien is unable to provide bail. Finally he becomes the executioner and starts him on his way to Europe.

The immigration inspector may be honest and sincere. And the great majority of them are. Few of them desire to railroad men from the country, if left to themselves. But they have been subjected to a terrific pressure; an almost

irresistible pressure in many parts of the country. They, too, were indicted as "reds" and revolutionists if they resisted the hysterical clamor of their locality, a clamor supported by the police, by chambers of commerce, and by the press. For we have been trying the alien by hue and cry, by the methods practiced in the South against the Negro. And the immigration inspector is but human. He wants to live at peace with his community.

A record of the hearing which the inspector holds is sent to Washington for review. His findings must be approved by the Department of Labor. There may be a hearing on the case. But this does not often happen. And even this is only a slight protection. For the examination is conducted, the record is made up, and the hearing is closed by the inspector, who stops when he feels the case has been made out, or when he has lured some admission from the alien or produced some writing, printed matter, or other evidence that seems to inculcate him.

Hundreds of officials scattered throughout the country can arrest an alien, try him in secret, hold him *incommunicado*, and if the opinion is approved at Washington, start him on his way to Europe without as much of a trial as we accord to a common drunk in the police court. The alien might, in fact, be landed in Europe and his family might not know what had become of him. A false entry, a misunderstood question, or a wrongly translated answer may convict. "Frame-ups" are possible; "frame-ups" to seize the alien's property; "frame-ups" resulting from race quarrels; "frame-ups" resulting from strikes and industrial conflicts. Men have been examined at Ellis Island who claimed they had been beaten to compel admissions. Aliens have been told that if they refused to testify their refusal of itself would incriminate them. The alien was convicted if he did testify; he was convicted if he didn't.

But this is by no means all. Ours is supposed to be a Government of laws, not of men. A man can only be convicted for a specific statutory offense. Not so with the alien. If a specific offense cannot be proven, the alien can be held under the drag-net accusation that he is "likely to become a public charge." There may be no truth in the accusation; he may be possessed of adequate property. But when other charges fail, the inspector lays this charge against him. And the courts sustain it. As a result the alien may be

deported for no reason whatever except that some one believes he is undesirable. Certainly Congress did not contemplate that administrative officials should themselves make laws and then execute them.

Has the alien no right in court at all? Does he never sit before the bar of justice with legal counsel, his friends, the bright light of publicity to protect him from injustice and abuse? Occasionally, but not often. His only opportunity of a public or a court hearing is under writ of *habeas corpus*, the old Anglo-Saxon protection that we guard so jealously. The inspector may prevent him enjoying even this right. He may hold him *incommunicado*; he may refuse to admit attorneys; he may send him out of the jurisdiction to prevent a trial in court. This has been done. But even a trial under this writ is merely a shadow. It is not a trial which determines the guilt or innocence of the accused. The court does not decide the merits of the case, or pass upon the weight or probability of the evidence. If the courts are able to find any evidence, even a suggestion, that is all that is required. For the courts have decided that if the inspector has any evidence on which to sustain the decision, that is all that is needed to deport.

We are deporting aliens for their opinions; a practice that prevailed in Spain at the time of the Inquisition. It prevailed in New England in the early days; it prevailed in old Russia and in Prussia. Over a century ago British judges wiped out the practice in that country as incompatible with Anglo-Saxon ideals of justice. English law demands an overt act; at least, a spoken word. It refuses to go into men's libraries, into a man's mind, into his conscience, to make him a criminal. Men have been arrested within the last few months and held as dangerous aliens for believing in Government ownership of railroads; for having books in their possession on the Single Tax and on Socialism. A number of second-hand book dealers have been arrested.

There are stupidities as well as wrongs in the procedure; terrible stupidities. The immigration law is inflexible in its mandates. For some offenses, such as inability to read, men, women, and children must be deported, unless the Secretary of Labor is willing to violate the law. One day last spring, as I approached Ellis Island on the ferry boat, I witnessed a struggle on the pier in which a young woman was being torn from her father, her mother, her sisters, by

force. She was suffering from some mental disorder. She was being sent back to Italy unprotected and perhaps to starve. The same day I heard that a young woman had been sent back to starving Armenia because she was unable to read. She was said to have escaped as a stowaway, only to be sent back, possibly on the same steamship that was carrying food from America to feed her starving countrymen. A short time afterwards a deputation of responsible men called on me to say that East Indians were being sent back to India, where they would be shot. Mistakes and wrongs are buried if the alien is sent overseas.

'What would the press of America say if American citizens, legally in Mexico, were deported from that country under a procedure such as this; a procedure which, in the case of the alien, means that he is torn from his family, his property, his friends, his identification with the country—without notice, often without bail, without an attorney, and with an accelerated speed unknown to ordinary legal procedure?

There might be some justification for throwing all restraints to the wind if the country was in danger, or if orderly proceeding were impossible. But the records show no such emergency. There is little to justify the assumption that the alien is a criminal or a dangerous "red." What are the records of the war? This should be a test of the alien's disloyalty. Re-read the records of Liberty Bond sales. In community after community where aliens predominated, Liberty Bond issues were oversubscribed. There were 15,000 Russians in the American Army and the subscriptions of Russians to the Liberty Loan totalled \$40,000,000. The Greeks took \$30,000,000, while Germans, Bohemians, and Italians did equally well. Many alien groups went over the top in shorter time than did similar communities of native born.

Re-read the records of the doughboys. The alien did not wait to be conscripted. He volunteered. The casualty lists that came back from France read like a census of foreign countries. No race, no alien group was missing. Germans, Austrians, Hungarians, Russians, Poles, Italians, those who are now most discredited, fell in the earliest fightings. There was no disloyalty in France; there was little disloyalty in this country. Yet for two years tens of thousands of secret service agents were filling the press with scare stories of treason, of spies, of munition plots, of burnings,

of poisoned water supplies, of conspiracies, and of dangers of all kinds.

What do the records at Washington show to justify our present alarm? There were only two aliens deported as anarchists or anarchistically inclined in 1918, and only thirty-seven in 1919. The pioneer deportees, those who came from Seattle in February, 1919, were heralded all over the country as dangerous anarchists. They were assumed to be Russians. Yet of the thirty-six brought from the State of Washington, one was an American citizen, and twenty-seven were natives of England, Scotland, Ireland, Denmark, Norway, and Finland. The others were natives of Poland, of Russia, and of Austria-Hungary. Their average residence in America was twelve and one-half years.

And what is the effect of these wholesale arrests and deportations on the alien; on those whom we are inviting into our night-schools; on those whom we are seeking to identify with our institutions by Americanization? The alien peoples in America, especially those from central and southern Europe, are in a state of panic. They are living in perpetual fear. The mass attacks in the press justify their apprehension, a fear that they are likely to be seized and torn from their homes, and that all America is eager to be rid of them by the most expeditious process possible. We have made Americanization impossible. For even the alien is discerning enough to realize that freedom is an empty thing if it is stripped of those liberties and civil rights which distinguish America from the Old World. We have destroyed our efforts to Americanize by poisoning the minds of those whom with one voice we profess to desire to free, while with another we deny them the only thing save a job that America means to them.

Wendell Phillips said that slavery made a slave of the master no less than the slave. Our experience has shown that even a free people can lose their freedom by denying it to others.